

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

**February 28, 2000**

**D030273        Woodglen Pacific, Ltd., et al. v. Cayman Investment Corp., et al.**  
Judgment affirmed. Haller, J.; We Concur: Work, Acting P.J., Huffman, J.

**D032663        People v. Houck**

**D032892        People v. Houck**

(Consolidated) The judgments are affirmed, except as to the true findings on the allegations that Houck's 1983 conviction for assault with a deadly or dangerous weapon constituted a strike for purposes of the Three Strikes law, which are reversed. The sentences are vacated and the matters are remanded for retrial of the truth of such allegations, in a single proceeding, and for resentencing. McIntyre, J.; We Concur: Kremer, P.J., Benke, J.

Court convened at 10:30a.m.

Present: The Honorable Daniel J. Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller  
Deputy Clerk: W. Pasek

**D032381        Lear et al. v. Board of Retirement of the San Diego County Employees Retirement Association et al.**

Cause called on merits. Miriam E. Brewster, Deputy Counsel, argued for appellant. Robert C. Fellmeth, Esq. argued for respondent. Ms. Brewster replied. Cause submitted.

Court adjourned at 11:00a.m.

**D032296        People v. Taylor**

The petition for rehearing is denied.

**D034456        In re Monique P., a Juvenile**

Appellant's motion to vacate dismissal and reinstate appeal is granted. This court's order of January 27, 2000, dismissing the above-entitled appeal is vacated and the appeal is reinstated. Appellant is relieved from default for failure to timely file the appellant's opening brief.

Appellant's request for appointment of counsel is denied.

Appellant is granted 30 days from the date of this order to file her opening brief.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE**

**February 28, 2000 (Continued)**

**D034715          Genzler v. Superior Court of San Diego County/The People**

Let a peremptory writ issue directing Judge Heumann to vacate his order granting and denying in part the motion to disqualify and to enter a new order denying the motion in its entirety. The stay previously imposed shall remain in effect until the finality of this opinion as to this court.

**D032030          Effie May, Inc. v. County of San Diego**

The request for publication of the opinion is denied.

**D035029          Houessankhani v. County of San Diego**

Pursuant to California Rules of Court, rule 10(c), the appeal filed January 7, 2000, is dismissed for appellant's failure to timely designate the record. (Cal. Rules of Court, rules 4(a) and 5(a).)

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE**

**February 29, 2000**

**D034996        People v. Pham**

In that the certificate of probable cause was denied, appellant may not challenge his plea. It is unclear whether appellant wishes to seek review of his sentence. The appeal is dismissed without prejudice to reinstatement should appellant notify the court of his intention to challenge only his sentence within 15 days of the date of this order.

**D033846        People v. Jurgensen**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 38.)

**D032240        People v. Shelley**

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., Haller, J.

**D030860        Balog v. Becton Dickinson and Company et al.**

The judgment is affirmed. Respondents are entitled to costs on appeal. Kremer, P.J.;  
We Concur: Benke, J., Haller, J.

**D034297        In re James O., a Juvenile**

The order of the juvenile court is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J.,  
Nares, J.

**D032627        People v. Giles**

The judgment is reversed. McIntyre, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D032020        People v. Rivera**

The judgment is affirmed. Nares, J.; We Concur: Work, Acting P.J., O'Rourke, J.

**D033602        In re Vanessa S., et al., Juveniles**

**D033854        In re Vanessa S., et al., Juveniles**

(Consolidated) We reverse the juvenile court orders denying the section 388 petition without an evidentiary hearing and terminating parental rights. We remand the matters for further proceedings in accordance with this opinion. McIntyre, J.; We Concur: Benke, Acting P.J., McDonald, J.

**D032641        In re Jose R., a Juvenile**

The order is affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

**February 29, 2000 (Continued)**

**D033741       Brammell v. Ramona Municipal Water District et al.**

**D035016       Brammell v. Clark et al.**

Appellant's unopposed motion to consolidate the above-numbered appeals is granted. All future documents will be filed under D033741. Appellant's opening brief is due 30 days after the filing of the record in D035016.

**D030982       People v. Lorenzo et al.**

Appellant Marco A. Valadez's motion to recall the remittitur, vacate the dismissal, and reinstate the appeal is granted.

The Clerk of the Superior Court is directed to return the remittitur which issued on January 5, 1999, to this court on or before March 6, 2000. Attorney Kenneth Carroll is relieved as attorney of record and Beatrice C. Tillman, of Appellate Defenders, Inc. is appointed for appellant Marco Valadez. This case will be an Appellate Defenders, Inc. staff case.

Appellant's opening brief is due April 10, 2000.

**D033867       Maxwell v. City of San Diego**

In that the notice of appeal is untimely filed, the appeal is dismissed. The motions for judicial notice, for calendar preference, to advance cause on calendar, for sanctions, to set aside and vacate the judgment of dismissal, to modify the judgment or orders and for reversal, for factual determination on appeal and for extension of time are denied as moot.

**D035091       People v. Johnson**

The denial of a Penal Code section 995 motion is not appealable. (Pen.Code, sec. 999a.) The appeal is dismissed.

**D033770       On-Point Technology Systems, Inc. v. Solutioneering, Inc. et al.**

Appellant has failed to notify this court by letter of the progress of the bankruptcy proceedings as directed by this court on August 5, 1999.

The appeal is dismissed as abandoned.

**D031180       Maides et al., v. Ralphs Grocery Company**

The petition for rehearing is denied.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

**February 29, 2000 (Continued)**

**D032580        People v. Giacomaro**

The petition for rehearing is denied.

**D034964        In re Moore on Habeas Corpus**

The petition is denied.

**D035137        San Diego Refrigerated Services, Inc., et al. v. Superior Court of San Diego  
County/Redevelopment Agency of the City of San Diego**

The petition is denied.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

**March 1, 2000**

**D030557        People v. Dibernardo**

The petition for rehearing is granted. The Attorney General is directed to respond to arguments in appellant's petition for rehearing not later than March 22, 2000.

**D030347        In re Marriage of Sukumar**

The petition for rehearing is denied.

**D031568        Ivey v. California Casualty Insurance Company**

On the court's own motion, rehearing is granted. The opinion is refiled this date.

**D035003        In re Stafford on Habeas Corpus**

The petition is denied.

**D032140        People v. Gomez**

The conviction for possession of methamphetamine is reversed. The trial court is directed to amend the abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed. Haller, J.; We Concur: Kremer, P.J., Benke, J.

**D030812        People v. Luna**

Affirmed. Haller, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

**D030452        Centex Golden Construction Company v. Dale Tile Company**

Judgment affirmed. CERTIFIED FOR PUBLICATION. Benke, Acting P.J.; We Concur: Huffman, J., Nares, J.

**D032041        Loguercio v. United Air Lines**

The judgment is affirmed. Huffman, J.; We Concur: Work, Acting P.J., Benke, J.

**D033091        Iaea v. Pacific Metals and Manufacturing, Inc., et al.**

The judgment is affirmed. Wagner, J. (assigned); We Concur: Benke, Acting P.J., Huffman, J.

**D028822        West Coast General Corporation v. Redevelopment Agency of the City of San Diego**

Judgment affirmed. Benke, Acting P.J.; I Concur: Haller, J.; I Concur in the result: Huffman, J.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

**March 1, 2000 (Continued)**

**D032454      Dimock v. Emerald Properties, et al.**

In reviewing the briefs and record in this case the court has noted the declaration of Teri Heard, submitted on behalf of defendant and respondent T. D. Service Company (T. D.). With respect to the disputed substitution of trustee recorded on August 15, 1996, and a notice default recorded on the same date, Heard's declaration states in pertinent part: "The persons preparing the new documents would not have been aware of the preexisting foreclosure that was already pending. The substitution of trustee and new notice of default were recorded by mistake. The ongoing foreclosure was noted, and the new foreclosure was promptly abandoned." The court is interested in determining when and by what means the abandonment of the substitution of trustee, attested to be Heard, was effected. Aside from Heard's declaration, the court has not been cited to nor been able to locate any other evidence in the record on appeal which makes reference to the abandonment of the August 15, 1996, substitution of trustee. T. D. is directed to advise the court by letter brief within 20 days of the date of this order whether and where evidence which establishes the date of the abandonment and the means by which such abandonment took place appear in the record on appeal. All other parties may respond to T. D.'s letter brief within 10 days after it is filed. The order setting this case on calendar for oral argument is vacated. The case will be placed on the court's May 2000 oral argument calendar. Benke, Acting P.J.

**D030296      Chopra v. Schoville et al.**

The judgment is reversed and remanded with respect to plaintiff's first three causes of action; in all other respects the judgment is affirmed. Each party to bear its own costs of appeal. Benke, J., I Concur: Work, J., Concurring and Dissenting (Opinion), Haller, J.

**In re the Marriage of Ziegler**

The petition for rehearing is denied.

**D035149      Kite v. Superior Court of San Diego County/Kite**

The petition is denied.

**D030628      Aguilar et al., v. Atlantic Richfield Corporation et al.**

The petition for rehearing is denied.

**D034907      Crawford v. Superior Court of San Diego County/Gremark Partners, Inc.**

The petition is denied.

**D033957      In re Marquis Terrel P., a Juvenile**

The orders are affirmed. Huffman, J.; We Concur: Work, Acting P. J., Haller, J.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

**March 1, 2000 (Continued)**

**D034578      Walter B. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency**

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

Deputy Clerk: D. E. Moore

Matter called on merits. Erika Hiramatsu, Alternate Public Defender argued for petitioner, Walter Blackman. Kathleen Mallinger, Esq. was present in oral argument for petitioner, Emelia Blackman, but did not argue. Katherine Bird, Deputy County Counsel argued for real party in interest. Ms. Hiramatsu replied. Matter submitted.

Court adjourned at 10:23 a.m.

**D034198      In re Amber J., a Juvenile**

The order is affirmed. Kremer, J.; We Concur: Huffman, J., Nares, J.

**D033187      Ferris v. Dowdy**

The judgment is affirmed to the extent it denied appellants' claims to be declared beneficiaries of trust A; the judgment is reversed to the extent it granted respondent's summary adjudication motion and denied appellants' remaining claims to be declared beneficiaries of trust B. The cause is remanded for further proceedings consistent with this opinion. The parties are to bear their own costs of appeal. McDonald, J.; We Concur: Huffman, Acting P. J., O'Rourke, J.

**D034394      Lynda Claire Hoffman, et al, v. Dunham and Associates Mortgage Fund, LTD et al. JoAnn MacKenzie**

Upon written stipulation filed by Dunham and Associates Mortgage Fund and JoAnn MacKenzie, the appeal by Dunham and Associates Mortgage Fund as to JoAnn MacKenzie is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 19(b)). Each party to bear own costs on appeal.



**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

**March 2, 2000**

**D030451        MCB Realty Services, Inc. v. El Rancho Del Pomerado Partnership et al.**

**D030735        MCB Realty Services, Inc. v. El Rancho Del Pomerado Partnership et al.**

The petition for rehearing is denied.

**D034823        R. Bruce Kleege et al. v. Superior Court of San Diego County/Georg Lingenbrink et al.**

The petition is denied.

**D034680        In re Handy on Habeas Corpus**

The petition is denied.

**D031390        City of San Diego v. Lumen Hospitality LLC**

The judgment is affirmed. Kremer, P.J.; We Concur: Work, J., Huffman, J.

**D034486        In re Valenzuela on Habeas Corpus**

The petition is denied.

**D030391        Aroma Manufacturing Co. v. Employers Insurance of Wausau et al.**

The judgment is reversed and the matter remanded to the trial court with directions to enter judgment for appellant. Appellant is entitled to costs on appeal. McDonald, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

**D035034        In re Frazier on Habeas Corpus**

The petition is denied.

**D035074        Gonzalez v. Superior Court of San Diego County/People**

The petition is denied.

**D032827        Continental Recovery Services v. Bielinski**

Judgment affirmed. Respondent to recover its costs of appeal. Benke, Acting P. J.; We Concur: Huffman, J., Nares, J.

**D034927        EDP Asset Investment Co., v. Dupuis/Pecheles**

Appellant's motion to vacate dismissal and reinstate appeal is granted. The order of dismissal is vacated and the appeal is reinstated. The San Diego County Clerk of the Superior Court is directed to accept the designation of the record on appeal, provided the designation is presented within ten days from the date of this order.

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

**March 3, 2000**

**D034171        In re Mendez on Habeas Corpus**

The petition is denied.

**D034826        In re Golden on Habeas Corpus**

The petition is denied.

**D033044        Morgan v. Alexander et al.**

The judgment is affirmed. Respondents are entitled to costs on appeal. McDonald, J.;  
We Concur: Work, Acting P.J., Haller, J.

**D034937        People v. Martinez**

Appellant's motion to vacate dismissal and reinstate appeal is granted. The order of dismissal is vacated and the appeal is reinstated. Defendant's application for a late notice of appeal is granted. The notice of appeal filed January 12, 2000, is deemed to have been timely filed. The San Diego County Clerk of the superior court is directed to process the appeal under this appellate number D034937, within rule time dating from this order.

**D032437        Toorop v. California State Personnel Board/Barberio**

Appellant's exparte application for petition to file late brief in propria persona is granted. The request for rehearing issues for reconsideration is denied.

**D031937        Reed v. Goode & Peterson**

The petition for rehearing is granted.